IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1503 of 2007

Mathivanan @ Mathi .. Petitioner

Vs

1. State, rep. by its Secretary
   to Government, Prohibition and
   Excise Department, Secretariat,
   Chennai-600 009.

2. The Commissioner of Police,
   Coimbatore City, Coimbatore. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.S.Swamidoss Manokaran
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, the detenu herein, who was incarcerated at Central Prison, Coimbatore, by order dated 28.5.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, seeks a writ of Habeas Corpus to call for the records in connection with the said order of detention made in C.No.47/G/IS/2007, to set aside the same and to direct the respondents to produce him before this Court and set at liberty.

2.1. The impugned order of detention was passed based on the ground case said to have taken place on 8.5.2007 at 18.30 hours, complaint of which was given by one Manjula Raj. According to the

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complainant, when she was walking on the Vysial street along with her family friend, the detenu suddenly snatched her gold chain and started to run and on raising alarm, her friend and the persons nearby chased the detenu. But, the detenu brandished his knife and threatened to kill anyone who approaches him, due to which, the people ran for safer places and the shopkeepers of that area downed their shutters. However, the detenu was apprehended by the family friend of the complainant and another, who produced him before the Sub-Inspector of Police, B-1 Bazaar Police Station and also lodged the written complaint. The detenu was arrested and a case in Crime No.467 of 2007 was registered against him for the offence under Section 397 IPC and later, he was produced before Judicial Magistrate No.V, Coimbatore for judicial remand.

2.2. On being satisfied that the detenu had acted in a manner prejudicial to the maintenance of public order, after taking into consideration two adverse cases, viz., in B-10 Selvapuram Road Police Station Cr.No.752/06 for offences under Sections 397 and 34 IPC and in B-1 Bazaar police station Crime No.465/07 for offence under Section 379 IPC, the impugned detention order was clamped on the detenu.

3. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the specific plea raised by the detenu in his representation dated 6.10.2007 that he was taken by the police on 7.5.2007 and not on 8.5.2007, as mentioned in the detention order, was not considered in the rejection order dated 20.10.2007.

4.We have perused the entire materials placed before us. Even though in the grounds of detention, it was stated that the detenu was arrested on 8.5.2007 with respect to the ground case, in the representation made by the detenu dated 6.10.2007, he had specifically stated that he was taken on 7.5.2007 by the Police and was kept under their custody and thereafter, a false case was foisted against him. However, the second respondent, while passing the order of rejection dated 20.10.2007 rejecting the representation of the detenu dated 6.10.2007, had not considered the contention raised by him as to his arrest.

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5.We are, therefore, satisfied that the detaining authority had not taken note of the above fact, which shows the non application of mind on the part of the detaining authority. Accordingly, the

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order of detention is vitiated and the same is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sra

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The Commissioner of Police,
   Coimbatore City, Coimbatore.

3. The Superintendent
   Central Prison, Coimbatore.

4. The Public Prosecutor
   High Court, Madras.

5.The Joint Secretary to Govt,
  Public (Law and Order) Department,
  Fort St George, Chennai-9.
  + One cc to Mr. S. Swamidoss Manokaran, SR 73315.
  AKR (co)
  sg 07/01/08

HCP No.1503 of 2007

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